

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 6, 1999
at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Bill Wilson (D)

Members Excused: Sen. Lorents Grosfield (R)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Services Division
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB29, SB 9, 1/6/1999
Executive Action: None

HEARING ON SB 29

Sponsor: SENATOR JOHN HERTEL, SD 47, MOORE

Proponents: Bud Clinch, Director, Department of Natural
Resources and Conservation

Opponents: None

Opening Statement by Sponsor:

SEN. HERTEL, SD 47, MOORE presented SB 29. This bill is "An Act to Remove Obsolete Statutory Directives and Procedures Related to Canal Projects Owned by the Department of Natural Resources and Conservation." These projects would then be turned over to existing Water User Associations, if they are available, or just merely abandoned.

This is an issue that had its start back in 1991 with HB 814 that passed enabling the disposal of 12 of these canal projects. In 1993, SB 97 enabled the transfer of another one of these canal projects in the Lewistown area to a Water User Association and that passed.

This Bill is just a continuation of other canal projects. The Department is looking at about 20 other projects to either abandon or dispose of some other way. Many of these projects are no longer in use and they have more or less been abandoned or are no longer even operable. It just makes good sense for the Department to get rid of them for many reasons. The transfers that have already taken place have worked well. The people in the Lewistown project are very happy with that transfer and the Department of Natural Resources is also happy.

Proponent Testimony:

Bud Clinch, Director, Department of Natural Resources and Conservation spoke in favor of SB 29 as per attached **EXHIBIT (nas03a01)**.

He also introduced **Tim Keenan** and **Ann Yates** as the two Department employees that are personally responsible for the completion of this project over the last several years and wanted to publically thank them for their commitment and completion of the project.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 6.5; Comments : None}

Questions from Committee Members and Responses:

SENATOR KEATING asked **Mr. Clinch** if some of these canals are just eliminated, have been covered over, cleaned up, weeds gone and the surface revegetated? **Mr. Clinch** then answered no. Most of these have actually transferred ownership to a private Water User Association that continues to use them. In making the transfer we analyzed that there was a small group of users that benefitted from it and it was certainly in the State's best interest to

transfer the responsibility for maintenance to those users. **SEN. KEATING** then asked if this is State property. **Mr. Clinch** answered no, the property transfers in fee title. **SEN. KEATING** responded, if it is on State Land they are given an easement and if it is a canal project that belongs to the State it is an easement on private property. **Mr. Clinch** reminded the committee to make sure they are differentiating between State Land in general and State School Trust Land. These projects for the most part are on non-trust land property.

SENATOR COLE followed up by saying he noted there were 12 projects that have already been transferred. **Mr. Clinch** responded that was correct. Originally there were 12 projects and in the 1993 Legislature **SEN. HERTEL** came forth and added a 13th one to it and now all of those have been transferred. **SEN. COLE** inquired if the Department had run into any problems with maintenance or them wanting to give them back to the State of these 12 or 13. **Mr. Clinch** responded he was not familiar with those problems. Sometimes a condition of the transfer is that the State participates in some degree of rehabilitation to make sure that they are in safe and proper operating condition before we transfer them.

SENATOR COLE questioned if any of the 26 would be abandoned completely. **Tim Keenan (DNRC)** responded yes, some of these projects simply have easements that were filed when they were constructed as far back as the 1930's. If there is no active Water Users Association or active water user associated with these projects and the projects were constructed through easements only, there would be a simple matter of terminating the easements and abandoning the project as a whole.

{Tape : 1; Side : A; Approx. Time Counter : 6.5 - 9.9; Comments : None.}

Closing by Sponsor:

SEN. HERTEL closed by saying that he feels this is something that is needed and hopes the Committee will look favorably upon the bill. The disposal of these 26 additional projects would make a lot of sense, especially for the Department as well as those people who live in that particular area. The Lewistown area project was established way back in the very early 1900's, however, it is still operable, they still use it and they use it for irrigation purposes as of yet today. The Water Users Association have gathered together and they are operating it much the same as they did when the State was involved and seem very happy with this transfer situation.

{Tape : 1; Side : A; Approx. Time Counter : 9.9 - 10.8; Comments : None}

HEARING ON SB 9

Sponsor: SEN. WALTER McNUTT, SD 50, SIDNEY

Proponents:

Bud Clinch, Director, Department of Natural Resources & Conservation

Ralph Peck, Director, Department of Agriculture

David Schultz, Water Utility Division, Butte Silver Bow

Mike Murphy, Montana Water Resources Association

Ron deYong, Lobbyist, Montana Farmers Union

Frank Crowley, Mountain Water Company

Lorna Karn, Montana Farm Bureau Federation

John Bloomquist, Montana Stockgrowers Association

Gloria Paladichuk, Richland Economic Development

Opponents: None.

Opening Statement by Sponsor:

SEN. WALTER McNUTT, SD 50, SIDNEY, presented SB 9 dealing with revising the Water Use Act. Currently, the statute requires that all proposed changes in water rights of 4000 acre feet (ac. ft.) or 5.5 cubic feet per second (cfs) must go through Legislative approval and confirmation. That is regardless of whether the water will stay in Montana or go out of the State. The holders of these water rights include municipalities and Conservation Districts. This Bill would change the statute and require Legislative confirmation and approval only on those water rights being transferred out of state.

This change is needed to remove a time constraint on in-state proposed changes or projects. As an example, in SD 50, they have been working on a very large irrigation project costing about \$20 Million. The purpose of the project is to convert dryland acres to irrigated acres in order to grow high value crops. These projects are very complex in design, permitting requirements and financing. A great deal of time has been required to acquire the contracts for the crops being considered for growing, particularly sugar beets, potatoes and those sort of things. The water right in question is currently held by Richland County Conservation District on which a change is requested. This change, according to current law, present statute, must be confirmed by the Legislature. These types of projects are very

time sensitive and very competitive and can not be heldover every two years for the Legislature to meet and act upon. There is no intent to change the out-of-state water portion.

Tape : 1; Side : A; Approx. Time Counter : 10.8 - 14.6; Comments : None)

Proponent Testimony:

Bud Clinch, Director of DNRC, strongly urged a Do Pass recommendation on SB9 and reviewed some important historical information with the Committee. The particular tradition in law referred to is one that was enacted by the 49th Legislature back in 1983 and it is remembered there was a fair amount of relatively heated discussion about the marketing of Montana's water, particularly to out-of-state interests. At that time there was considerable discussion about the use of vast quantities of water from the Missouri River and/or storage facilities for the initiation of a coal slurry pipe line. There was a ban on the exportation of water for out-of-state consumption but it was ruled unconstitutional by the U.S. Supreme Court in 1982 on what was known as the Sporhase Decision (Sporhase v. Nebraska, 458 US 941 [1982]). Consequently, Montana enacted a select committee on water marketing in Montana. They met and reviewed the issues and spent a considerable amount of time debating the issue. They ultimately prepared a report that was presented to the next Legislature and subsequently the amendment to the statute was enacted that basically presents the 4000 ac. ft. and the 5.5 cfs per second. **EXHIBIT (nas03a02)**

Ralph Peck, Director, Montana Department of Agriculture spoke in favor of SB 9 as per attached **EXHIBIT (nas03a03)**.

David Schultz, General Manager, Water Utility Division - Butte - Silver Bow spoke in favor of SB 9 as per **EXHIBIT (nas03a04)**.

Mike Murphy, Montana Water Resources Association: The Association wishes to go on record in support of SB 9. We feel the side boards are in place to protect the existing water rights in the State as well as the resources and feel this will provide for a more quick and timely response to a lot of these needs.

Ron Diyong, Lobbyist for Montana Farmers Union supported the bill for three reasons. (1) He felt Montanans should appropriate and use this water for the people of Montana and this helps do that. (2) He feels agriculture needs all the options they can get. Irrigation leads to specialized crops and specialized crops leads to processing plants which gives you a base to start from. (3) The law still requires that the applicant prove clear and

convincing evidence to protect municipalities, minimum stream flows in irrigation systems. That is included in Section 1, Subsection 2 & 4 of the bill. In the case of the Yellowstone, the Conservation Districts also have to sign off on that water which gives another safeguard.

Frank Crowley, Helena, Mt, on behalf of Mountain Water Company in Missoula, spoke in support of SB 9. Mountain Water Company will be submitting a letter for the record perhaps tomorrow or the next day.

Lorna Karn, Montana Farm Bureau Federation, spoke in support of this Legislation. She felt the safeguards are in place for the people who want to take water out of the State since they have to go through the Department and through the Legislature. She supports a DO PASS recommendation.

John Bloomquist, Montana Stockgrowers Association, spoke in support of this measure.

GLORIA PALADICHUK, RICHLAND ECONOMIC DEVELOPMENT, encouraged a DO PASS recommendation. The Richland County Project is a proposed irrigation project which is 100% dependent on obtaining water. This is not only going to be beneficial for Eastern Montana but for the entire state.

{Tape : 1; Side : A; Approx. Time Counter : 22.8 - 30.2; Comments : None}

Opponents Testimony: None

Questions from Committee Members and Responses:

SENATOR KEATING recalled a previous conversation regarding in-state water a few years ago, that about 90% of the water from this state flows out at various points and eventually leaves the state. **Mr. Clinch** was not familiar with the exact number but the concept is certainly true with the two major drainages of the Yellowstone and the Missouri heading to the East and the Clark Fork Drainage Flathead on the West and felt that was probably an accurate appraisal.

SENATOR KEATING questioned if there was some fear there is not going to be enough water in the State and that is why this bill is here. **Mr. Clinch** responded the real purpose of the bill is to alleviate the current requirement that when applicants request a Change Authorization, for large volumes of water greater than 4000 ac. ft. or 5.5 cfs, in addition to going through all the requirements that the Department initiates to come to the

conclusion that this project can be authorized, according to current law, it then needs to be brought to the next legislative session for concurrence of the legislative body before the applicant has the authority to proceed. The amendment is merely trying to clarify that they would only have to come before the legislature if the use of that water is for out of state purposes.

SENATOR KEATING questioned if one of the reasons for the bill was to facilitate the expansion of irrigated lands in the state through new irrigation projects. **SEN. McNUTT** responded yes and it fits with the Vision 2005 focus. The proposal, over the next few years, is to expand irrigated acres in this state to approximately 500,000 acres.

This project for 15,000 acres needs something like 30,000 cfs for the project. (**Gary Aamestoy** interjected that the correct amount of cfs was 130 cfs rather than 30,000 cfs.) That is well above the statute of 5.5 cfs. In these projects right now we seem to be running a great deal of competition with our neighbors to the East of us. It is very simple in North Dakota to get water and do these kinds of projects. As an example, Holly Sugar made a comment that they will probably have 10,000 acres of new crop beets available and they really do not care if they go to North Dakota or they go to Montana. If Montana does not have these projects on line and have this irrigation on line, they are going to go to North Dakota.

SENATOR KEATING asked who would be financing these irrigation projects. **SEN. McNUTT** responded in this particular project, there are 12-15 individuals that will be involved. They are now in the process of forming an Irrigation District. The District will seek some bonding and funding to do this but they are not asking for grants or payment from the state. They would like to get funding for a payback over 20 years because of the value added crops that they can generate on irrigated vs. dryland. If these costs can be mitigated and done in a timely fashion, they can make this work.

SENATOR COLE questioned if there were a number of projects coming up or would there be just this one project. **Mr. Clinch** responded it is important to keep in the mind the purpose for this change is for more than specifically irrigated acres. That use is the only application meeting this criteria at this time, however, a similar one pending will be the domestic water supply with Mountain Water of Missoula.

*{Tape : 1; Side : A; Approx. Time Counter : 30.2 - 40; Comments :
Tape was turned to Side B at this point and the remainder of the
meeting did not record.}*

Closing by Sponsor:

SEN. McNUTT closed by stating that sprinkler irrigation would be used on this project, not flood irrigation. He stressed the importance of Vision 2005 to agriculture in the state and to the municipalities. Sidney's water source is wells, if they went dry, the Yellowstone River flows by and the municipality has a water right in the river. With this change, that source could easily be utilized. It would enhance crop production and add jobs and income to the state. He recommended a DO PASS vote.

ADJOURNMENT

Adjournment: 4:00 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas03aad)